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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CLAUDIO L.K. LINS

Appeal 2009-004510
Application 09/766,730
Technology Center 1700

Decided: September 03, 2009

Before EDWARD C. KIMLIN, BRADLEY R. GARRIS, and
ADRIENE LEPIANE HANLON, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-5, 9-15, 17, 26 and 27. The Examiner has withdrawn the final rejection of claims 6-8, 16, and 18-25. We have jurisdiction under 35 U.S.C. § 6(b).

Claim 1 is illustrative:

1. A substantially non-aqueous electrostatically dispensable

disinfectant composition comprising an alcohol solvent component in combination with a glycol solute component, said combination having an initial conductivity, and further comprising a conductivity control component comprising at least one of a silicon oil, an essential oil, a fatty acid ester and combinations thereof in an amount sufficient to reduce said initial conductivity, and wherein all composition components of the disinfectant composition for electrostatic dispensing are at least one of soluble and miscible.

The Examiner relies upon the following references in the rejection of the appealed claims (Ans. 3):

Peltier	5,382,410	Jan. 17, 1995
Schroeder	5,591,395	Jan. 07, 1997
Rabe	6,531,142 B1	Mar. 11, 2003

Appellant's claimed invention is directed to an electrostatically dispensable disinfectant composition, as well as a system and method for using the composition. The composition comprises an alcohol solvent, a glycol solute, and a material for reducing initial conductivity, such as a silicon oil. All the components of the composition are either soluble or miscible in the solvent.

Appealed claims 1-5, 9, 11-13, 15 and 17 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Rabe. Claims 10 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rabe in view of Schroeder. Claims 26 and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rabe in view of Peltier.

We will not sustain the Examiner's § 102 rejection of claims 1-5, 9, 11 and 12 over Rabe. These claims require that all the components of the disinfectant composition are soluble and miscible (claim 1), or, stated otherwise, the composition is free of immiscible and insoluble components

(claim 9). Rabe, on the other hand, discloses an electrostatically-sprayable composition that must include from about 0.1% to about 35% of a particulate material that is insoluble and immiscible in the composition (*see* abstract, col. 3, ll. 29-30, col. 6, ll. 21-25). To support the rejection, the Examiner cites Rabe's disclosure that "[a]s will be apparent for the skilled practitioner all combinations of such embodiments and features are possible and can result in preferred executions of the invention" (col. 2, ll. 56-59). However, we are in full agreement with Appellant that such disclosure cannot reasonably be interpreted as teaching a composition that does not contain one of the four recited components, namely, component (c) which is an insoluble or immiscible particulate material. The Examiner also points to Rabe's disclosure that "[t]he liquid insulating materials and conductive materials present in the composition are sufficiently miscible or soluble in the composition such that they are in substantially, preferably essentially, one phase" (col. 3, ll. 34-37). The Examiner does not explain, however, how this disclosure regarding components (a) and (b) has any relevance to the absence of component (c) in the composition.

We will sustain the Examiner's § 102 rejection of claims 13, 15, and 17 over Rabe. These claims do not require that the components of the composition are free of immiscible and insoluble components. Appellant maintains, however, that the electrostatic delivery system of Rabe does not comprise an electrostatic wick or vaporizing emitter that dispenses the composition in vapor and/or aerosol suspension form. However, we concur with the Examiner that the electrostatic system of Rabe, which forms an atomized spray of electrically charged droplets, may be fairly considered a vaporizing emitter that dispenses the composition in an aerosol suspension

form. Appellant has not refuted the Examiner's finding that the definition of an aerosol includes charged droplets suspended in a gas.

We will not sustain § 103 rejection of claim 10 since it is dependent on claim 9 which requires that the composition be free of immiscible and insoluble components. The Examiner has not explained why it would have been obvious to remove the particulate material from the Rabe composition.

We will sustain the § 103 rejection of claim 14. We concur with the Examiner that it would have been obvious for one of ordinary skill in the art to resort to routine experimentation to determine the optimum concentration and amount of disinfectant, particularly since Appellant does not refute the Examiner's finding that "Schroeder teaches that the composition causes a reduction of 3-log in the airborne microbial levels" (Ans. 7, second para.).

We will also sustain the Examiner's § 103 rejection of claims 26 and 27 over Rabe in view of Peltier. Appellant does not dispute the Examiner's factual determination that Peltier discloses an electrostatically dispensing system without a spray nozzle (claim 27), and placing the device within an air duct of a central air handling system (claim 26). Appellant contends that modifying the device of Rabe in accordance with Peltier, such that it does not include a spray nozzle and no longer sprays the composition onto the skin of a person, renders Rabe unsatisfactory for its intended purpose. However, this argument misses the thrust of the Examiner's rejection. Appellant has not rebutted the Examiner's position that it would have been obvious for one of ordinary skill in the art to provide the composition of Rabe into the apparatus of Peltier (*see* Ans. 11).

As a final point, we note that Appellant bases no argument upon objective of non-obviousness, such as unexpected results.

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In conclusion, based on the foregoing, the Examiner's § 102 rejection of claims 1-5, 9, 11 and 12 is reversed, and the § 102 rejection of claims 13, 15, and 17 is sustained. The Examiner's § 103 rejection of claim 10 is reversed, whereas the § 103 rejection of claims 14, 26, and 27 is sustained. Accordingly, the Examiner's decision rejecting the appealed claims is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a) (2008).

AFFIRMED-IN-PART

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